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HUSBAND'S 'PROSECUTION OF JESUS'

The Prosecution of Jesus. Its Date, History, and Legality. By RICHARD WELLINGTON HUSBAND, Professor of the Classical Languages in Dartmouth College. Princeton: UNIVERSITY PRESS, 1916. pp. 302.

Professor Husband has given us an elaborate study of a theme on which much has been written, a theme obviously of profound and abiding interest to all Christians and also to that small section of the human race from which the founder of Christianity sprang. The trial of Jesus is the topic discussed with ability, critical acumen, and—most important of all—with an anxious desire to be scrupulously fair. In a little book of some 300 pages, entitled *The Prosecution of Jesus*, the author deals with the charge against Jesus, the date of the trial, its course and its legality. In connexion with the subject he also treats of the legal rights of the Jews under Roman rule, the account of the trial in the Gospels, and the credibility of that account.

The main problem is, Who was responsible for Jesus' trial, condemnation, and execution? The current popular view, as Professor Husband correctly states, is that Jesus was tried by the supreme Jewish court, the great Sanhedrin, on the charge of blasphemy, and that he was condemned to death by that court; but in order that the sentence should be carried into execution, the consent of the Roman authorities was requisite. This was reluctantly extorted from Pontius Pilate, the Roman procurator at Jerusalem.

These impressions the author critically examines and, for the most part, confutes. He rejects the view that Jesus was formally tried by the Sanhedrin for an offence against the Jewish criminal law. He regards the trial by Pilate as the only formal trial that took place. He assumes, however, that there was a preliminary

hearing before the Sanhedrin and starts the novel theory, for which he offers no support, that this hearing was in the nature of an inquiry analogous to grand jury proceedings.

The subject manifestly bristles with difficulties. First, what credence are we to give to the Gospel narrative? The Gospels in their present form were reduced to writing long after the events they record. The accounts of the arrest, trial, and crucifixion admittedly present so much variation and discrepancy that it is hard to extract a satisfactory idea of what actually did take place. The following consideration has also to be borne in mind. Christianity soon broke away from the parent creed. The anti-nomistic form which it received under Pauline influence, while resented by some of the Apostles, made Christianity acceptable to the Gentile world and gained for it adherence among the subjects of the Roman Empire, of which it ultimately became the State religion. A tendency, possibly not altogether conscious, would naturally arise to remove the blame for the execution of Jesus from the representatives of Rome and place that responsibility upon the obstinate, unbelieving Jews. Entirely to exonerate the Roman authorities would have been a distortion of truth so contrary to the well-known facts of history as to be incredible. But without going to this extreme, the offence of the real culprit might be extenuated, and the blame shifted on to the victim's co-religionists. And this is precisely what has happened in the Gospels. Pilate is whitewashed—to be sure, not very successfully. The Sanhedrin is painted in the blackest colours. Professor Husband endeavours to redress the balance and to distribute the burden of responsibility more justly.

The weakness of the author is that he tries to be fair all round; fair to Pilate, fair to the Jews who brought Jesus before Pilate, fair to the writers of the Gospels. He aims at avoiding the necessity for assuming falsity on the part of the writers of the New Testament, malice or illegality on the part of prosecutor or judge. 'There are three possibilities', he says. 'First, that Jesus was under the legal control of the Roman authorities from the time of the arrest till the crucifixion. Second, that he was

tried for blasphemy or for false prophecy under Jewish law and procedure, and was convicted and then either (*a*) sent to Pilate for rejection or ratification of the conviction, or (*b*) re-tried by Pilate on the same charge according to Roman procedure, or (*c*) that he was tried on a charge of treason advanced by the Sanhedrin. Third, that the proceedings before the Sanhedrin were merely preliminary hearings, conducted in order to present a charge before the Roman court, and that the Sanhedrin presented the charge and the evidence to Pilate who conducted the trial according to Roman procedure. Jesus would then have been under the legal control of the Jewish authorities until the time of his transfer to Pilate, after which time he was in the legal control of the Romans' (pp. 14 and 15). This third view the writer favours. The fundamental doctrine he advocates is that the whole case was one of Roman law and that Jewish law played a most insignificant part in the proceedings (p. 15).

With this last conclusion one is inclined to agree, except as to one point. That the Sanhedrin took any part whatsoever in the trial of Jesus—*pace* the Gospel accounts—is highly questionable. All the probabilities are against this view. The institution of grand jury proceedings was unknown to Jewish jurisprudence. To act as a *delator* or informer was, and is at the present day, most repugnant to the Jewish conscience. For the members of the Sanhedrin, of their own motion, to have arrested a Jew, surrendered him to the hated Roman authorities, preferred a charge against him, and pressed that charge, is unthinkable and without parallel. Nor was there anything in the teaching of Jesus which would form the ground of a charge by the Sanhedrin, or to which they would take exception. The ethics of the New Testament is Jewish. The Sermon on the Mount, with its stress on purity, meekness, and mercy, reflects the spirit of Judaism. The sayings of Jesus have their parallels in the Old Testament, Apocryphal literature and Rabbinic traditions. In insisting on the indissolubility of marriage, Jesus was following the school of Shammai. The teaching of the Scribes and Pharisees he holds in respect. 'The Scribes and Pharisees sit in Moses' seat. All therefore

whatsoever they bid you observe, that observe and do' (Matt. 23. 2-3). He declares that he did not come to destroy the law but to confirm it (*ibid.* 5. 17, 18). He heals on the Sabbath. Where there is no actual work this involves no violation of the fourth commandment, and where life is in danger such violation is, according to the conception of Judaism, a positive duty. He consorts with the common people and is influenced by this association to make light of the laws of ritual cleanliness. But such laws were observed rigorously only by the *Chaberim*. He is conscious of a mission to his people alone. 'I am not sent but unto the lost sheep of the House of Israel' (*ibid.* 15. 24). He fully accepts the doctrine of the Resurrection in which he is at one with the Pharisees and against the Sadducees (*ibid.* 22. 23-33).

In all this what ground is there for accusation? Why should the Sanhedrin have tried him? His teaching was no danger to Judaism. His claims to the Messiahship were no offence from the Jewish standpoint. But, as it implied the rescue from the Roman tyranny, its assertion was a danger to the foreign power who therefore tried him.

Who denounced him to Pilate? Those whom he had denounced to the people. The ignorant and venal priests, creatures of Pontius Pilate whom Jesus had angered, ordered his arrest. The captain of the Temple guard, possibly assisted by Roman soldiers, carried out the order. What exasperated the priests was Jesus' disapproval of the Temple service as conducted by them. His statement that he would pull down the Temple and rebuild it in three days was blasphemy in the eyes of the chief priests, and induced them to surrender him to the Romans. But that by itself would have been no ground for his condemnation. Hence they charge him with not only perverting the people but causing unrest among them. And this charge was undoubtedly well founded. Pilate asks the prisoner, 'Art thou king of the Jews?' (*ibid.* 27. 11). And Jesus does not deny the claim. For the Roman procurator that was sufficient. There was no need for further evidence after the virtual admission 'Thou sayest'. A despised Jew could obviously not claim the

same formal trial as a Roman citizen. And so he was condemned and sentenced to the Roman form of execution reserved for foreigners and for the worst offenders. The statement in the New Testament that Pilate found no evil in him, washed his hands, and thus symbolically disclaimed all responsibility (*ibid.* 27. 24) is unhistorical, as Professor Husband, with all sober critics, admits. The purpose is manifest—to roll away the reproach for the crucifixion from the Romans and fasten it on the Jews who rejected salvation. The portrait of Pilate as a vacillating weakling is inconsistent with the Procurator's character and career as delineated by Josephus. Pilate condemned Jesus on political grounds as other insurrectionists had been condemned before him. This was well understood by the Roman soldiery who hailed him derisively as 'King of the Jews', crowned him in mockery, and set above his head the inscription, 'This is Jesus the King of the Jews' (*ibid.* 27. 37).

Was Jesus justly condemned? No. For he did not incite the people to active rebellion against the Roman authority. 'Render unto Caesar that which is Caesar's' was his counsel. In this policy of submission to the political powers that be, he was following Jeremiah's attitude to the Babylonian ruler, Hillel's attitude to Herod, and anticipating the advice of R. Johanan ben Zaccai to surrender to the Roman generals. He was misunderstood by the people, and possibly by some of his disciples. Hailed on his entry into Jerusalem as the expected Messiah, the saviour of the nation from oppression, the popular enthusiasm cooled when the hopes that had been raised were not realized, and no insurrection was started. 'My kingdom is not of this world' was too ethereal to be appreciated by the masses. Hence also the attempted rescue feared by the priests did not materialize. Pilate, however, the foreign governor who held the Jews by the power of the sword, drew no distinction between the claim of temporal and spiritual power. Possibly he was unaware of Jesus' pacificism. Enough for him that Jesus asserted that he was the Messiah and was so acclaimed. As such he was a danger to the Roman domination. But the Sanhedrin had no responsibility for

his trial, condemnation, or execution. The preliminary hearing took place not in the Hall of Hewn Stones (T. B., *Sanhedrin* 14 b), but in the house of the High Priest. The statement (Mark 15. 1) *ὅλον τὸ συνέδριον*, 'The whole council', is either incorrect or may refer to a special Beth Din of the priests. There was no reason why the Sanhedrin should have accused Jesus. They had permitted him to preach in the Synagogues without let or hindrance; his teaching could, therefore, not have been heretical. The chief priests prosecuted him because he opposed them, as did many of the Pharisees of the time. The high priests during the second Temple were most of them unworthy (T. B., *Pesachim* 16 a, *Joma* 71 b, *Horaioth* 13 a). This explains Jesus' saying that he would 'destroy the Temple and rebuild it in three days', which moved the High Priests to cries of horror. What Jesus obviously meant was that it was high time for a change. The parallel is the old promise, 'I will create a new heaven and a new earth'.

In conclusion I wish to discuss a few detailed points. Where does Professor Husband get his statement (p. 74 and p. 107) that the severest form of excommunication was equal to death?

What troubles Professor Husband as to the day before the Passover being called Passover is not difficult. The precept, 'On the first day you shall cause leaven to cease in your houses' is explained in the Talmud as referring to the 14th of Nisan, the day before Passover. The eating of the Paschal lamb at the last Supper on Thursday night, when Passover began Friday evening, is certainly strange. But if in the days of Hillel, when the first day of Passover fell on the first day of the week, the people were in doubt as to whether the Paschal lamb should be slaughtered on the previous day, the Sabbath, and their religious leaders could not resolve their doubts (*Pesachim* 66 a), then it might well be that when the first day of Passover fell on Sabbath some might have held that the Paschal lamb should be eaten not Friday night but on the previous Thursday night.

(p. 44, 1st line). 'The Jewish day began a short time after sunset and continued until the same time on the following evening'. It would be more correct to say that it began with night-

fall and continued to nightfall the next day. On the eve of Sabbath or Festivals we add a short period before nightfall, so as not to violate the sanctity of the day.

(p. 44, 5th line). 'The time of the appearance of the new moon was determined by calculation rather than by observation at this time'. This is not in accordance with tradition. The Mishna (*Rosh Hashanah*, chs. 1 and 2) clearly shows that the new moon was determined by the Supreme Court on the evidence of eye-witnesses. The accuracy of the testimony was checked by the astronomical knowledge of the Court (cp. R. Gamaliel's 'Figures of Phases of the Moon', *Rosh Hashanah*, 2. 8).

(p. 44). 'The first month of the year began on the evening of the new moon nearest to the vernal equinox'. This would not necessarily be so. Sometimes owing to the lateness of the winter and backwardness of the vegetation, an intercalary month—Adar Sheni—was added.

(p. 71). The questions put to Jesus may well have had as their object not to trap him but to ascertain his point of view. As already pointed out, healing on the Sabbath is not forbidden in Rabbinic law, when no actual labour is involved. It is a positive duty where the patient is dangerously ill. 'Is it lawful for a man to put away his wife for every cause' is a moot point, on which the schools of Shammai and Hillel differ.

(p. 79). ὄχλος may mean multitude in a neutral sense, not necessarily rabble. Cp. Rabbinic phrase מריבה באוכלוסין.

(p. 102, last line). 'It was expedient that *one man should die for the people*' (John 18. 2). This clearly means that rather than that the people should be misled into an abortive resurrection for which they would be punished by the Roman authorities, it was politic that the claimant to the Messiahship should be surrendered to the Romans. The phrase may be due to the influence of the Christian doctrine of the Atonement.

(p. 110). The reason why Jesus was taken before the High Priest was for the latter to determine whether Jesus should be surrendered to the Romans. The High Priest and his Council, in their condemnation of Jesus, acted from mixed motives.

Appointed by the secular authorities, they may have felt themselves responsible for the good behaviour of the citizens, and regarded it as their duty in the interests of the people to prevent insurrection. The charge, 'We found this man perverting our nation and forbidding to give tribute to Caesar, and saying that he himself is Christ a King' is absolutely consistent with the view that the High Priest was not trying Jesus on the charge of blasphemy, but only holding a preliminary inquiry to ascertain if Jesus should be given up to the Romans as an insurrectionary.

The author indicates a similar view on page 135. 'The Sanhedrin conducted an investigation into the charges being made against Jesus to see whether these were well founded to justify them in preparing an indictment against Jesus for submission to the Roman Court. When Tacitus, in his history of the reign of Tiberius, spoke in one brief sentence of the crucifixion of Christ, he placed all responsibility upon Pilate, for it could not have occurred to a Roman mind that any person in a province could be tried by any authority than the Roman'. This is well said. We are in agreement with the author, except that we would substitute the High Priest's Council for the Sanhedrin :

(1) There was no trial of Jesus by the Sanhedrin. The Sanhedrin tried capital charges in the Hall of Hewn Stones only. Jesus' preliminary trial took place in the High Priest's house.

(2) A trial by the Sanhedrin would not have taken place on the eve of the Sabbath or Festival.

(3) Voting with reason for opinion would have been given by the youngest member first. Here the High Priest gave his opinion first.

(4) If the condemnation was unanimous, the result would have been an acquittal.

(5) The Sanhedrin would not have regarded the claim of ability to destroy and rebuild the Temple in three days as blasphemy.

(6) The Jews at this time had lost the right of trials on capital charges. 'It is not permitted to us to put any man to death', said Jesus' prosecutors to Pilate.

(7) Crucifixion is not a Jewish punishment.

(8) Nor is theft a capital offence in Jewish law—except kidnapping. Hence the crucifixion of the two thieves was repugnant to the Jewish sense of justice.

On all the above grounds, many of which Professor Husband states, the legitimate conclusion is that Jesus was not tried by the Sanhedrin, but that he was surrendered by the priests to the Romans. They were exasperated by Jesus' disapproval of them. At the same time, they were moved by fear of an abortive insurrection and its dire consequences to themselves and the people. 'The Romans will come and take away both our place and nation'.

The statement under item 4 in the conclusion: 'If the condemnation of the Court was unanimous, the result would have been an acquittal, is based on the dictum in the Talmud (*Sanhedrin* 17 a): אמר רב כהנא סנהדרין שראו כולן לחובה פוטרין אותן. Rav Cahana says: 'If the entire Sanhedrin is in favour of condemning the accused (in a capital charge) he is acquitted.' See also Maimonides' Code *Hilchoth Sanhedrin*, ch. 9, part 1: סנהדרין שפתחו כולם ברצי נפשות תחלה ואמרו כולן חייב הרי זה פטור עד שיהיו שם מקצת מזכין שיהפכו בזכותו וירבו המחייבין ואחר כך יהרג. The reason given in the Talmud is that the object of not pronouncing a sentence of condemnation on the same day as the trial, is to allow opportunity for finding arguments leading to acquittal. Where the Court, however, had made up its mind unanimously for condemnation, this object would fail. That is, there is obviously either bias and prejudice, or at the least lack of the openness of mind and judicial spirit of calm deliberation requisite in a Court. The rule above stated is expressed in popular phrase as כולו חייב זכאי.

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